
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

GARFIELD COUNTY, UTAH, a Utah political subdivision; KANE COUNTY, UTAH, a Utah political subdivision; and THE STATE OF UTAH, by and through its Governor, SPENCER J. COX, and its Attorney General, SEAN D. REYES;

Plaintiffs,

ZEBEDIAHEDIAH GEORGE DALTON;
BLUERIBBON COALITION; KYLE KIMMERLE; and SUZETTE RANEA MORRIS;

Consolidated Plas,

v.

JOSEPH R. BIDEN, JR., in his official capacity as President of the United States, et al.,

Defendants,

HOPI TRIBE, NAVAJO NATION, PUEBLO OF ZUNI, and UTE MOUNTAIN UTE TRIBE;

Intervenor-Dfts.

Case No. 4:22-cv-00059-DN-PK (lead case)
Case No. 4:22-cv-00060-DN-PK

District Judge David Nuffer
Magistrate Judge Paul Kohler

DECLARATION OF MICHAEL J. LUNDELL

I, Michael J. Lundell, in accordance with 28 U.S.C. § 1746, declare as follows:

1. I am the acting Bears Ears National Monument (BENM or Monument) Manager for the Bureau of Land Management (BLM), an agency of the Department of the Interior. I have been acting in the position of Monument Manager since September 25, 2022. In my 13-year BLM career, I have served at the project, field, district, state, and national levels of the agency. I

started as a Recreation Technician in Kanab, Utah in 2008, where I worked for the Grand Staircase-Escalante National Monument. Approximately six months later, I started working as an Archaeological Technician for the Grand Staircase-Escalante National Monument. I then attended graduate school at Northern Arizona University where I received my Master of Arts in anthropology with a focus in archaeology and cultural resource management. In 2012, I started my permanent career with the BLM as an Archaeologist for the Richfield Field Office. In the BLM, I have worked in various positions ranging from Archaeologist, Acting Senior Archaeologist, Acting Deputy Preservation Officer, and Acting Monument Manager.

2. Prior to beginning my current detail as the BENM Manager, I served as the BENM Archaeologist from October 14, 2018, to September 25, 2022.

3. As Acting BENM Manager, I am responsible for directing employees assigned to the monument and coordinating with many other professional staff in the management of approximately 1.5 million acres of federal public land and associated resources within BENM in the State of Utah. I work collaboratively with many interested parties, including state and local governments, as well as other federal agencies, tribal governments, and the Bears Ears Commission to address many complex resource management issues.

4. I have reviewed the Plaintiffs' amended complaints concerning Proclamations 10,285 and 10,286 and pertinent agency documents.

5. The purpose of this Declaration is to provide the Court with additional information in support of the Federal Defendants' Motion to Dismiss. The facts set forth in this Declaration are based upon my personal knowledge and records kept in the ordinary course of the BLM's business.

6. On November 9, 2004, Drilling Consultants, Inc. located the Avalanche mining claims. The claims were located on lands managed by the U.S. Forest Service that are now within the boundaries of BENM. Drilling Consultants, Inc. forfeited the Avalanche mining claims by failing to pay the annual filing fee associated with each claim. The claims have been closed since September 1, 2010.

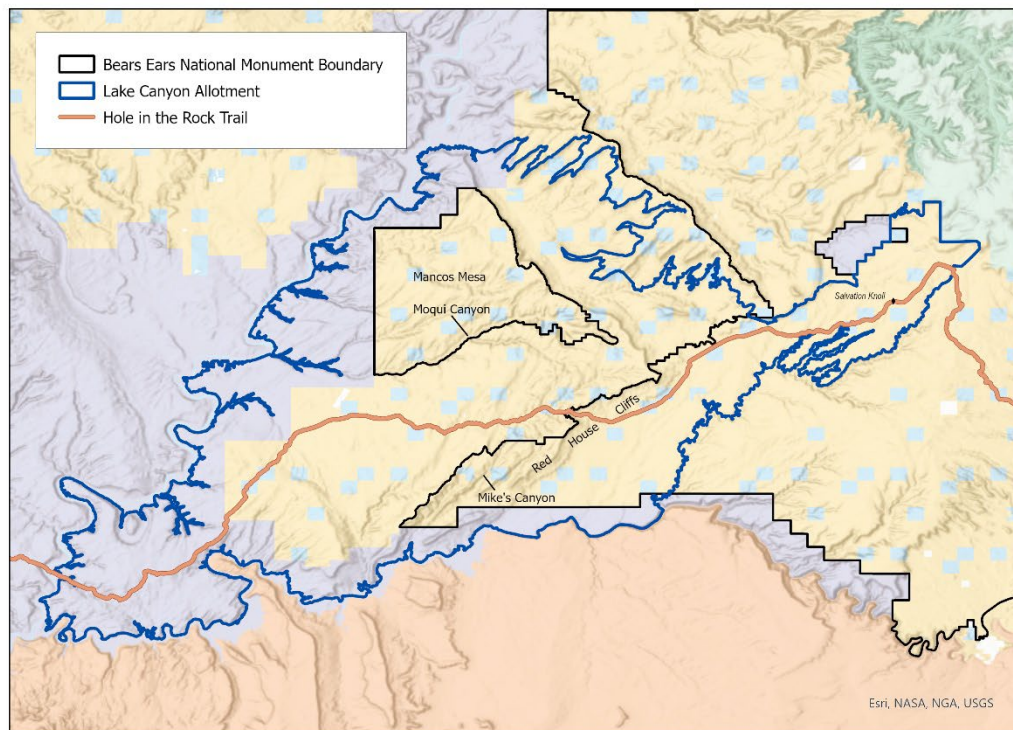
7. Over the years, multiple claims with some variation of the name “Spring Water” have been located on public lands managed by the BLM that are now within the BENM. Most of those claims have been closed since at least September 1, 2015, prior to the initial designation of BENM. The Spring Water #4 claim, which was located on September 29, 2017, is on BLM-managed public lands that are now within BENM. The Spring Water #4 claim remains active and could experience mineral development if the BLM receives a plan of operations and determines in accordance with 43 C.F.R. § 3809.100(a), after preparing a mineral examination report, that the Spring Water # 4 claim was valid before the lands on which they are located were withdrawn and remains valid.

8. Kimmerle Mining, LLC maintains four groups of mining claims that, collectively, are known as the Geitus claims. The Geitus claims cover approximately 432 acres and are located within BENM, just northwest of Natural Bridges National Monument.

9. Resources protected by Proclamation 10,285 are situated within the tracts of land subject to the Geitus claims. This includes habitation structures with associated artifact scatters documented in recorded cultural sites corresponding to the Pueblo I-III periods (from approximately 750 to 1350 CE). However, my ability to provide detailed information concerning these sites in the absence of an appropriate protective order is limited by section 9 of the Archaeological Resources Protection Act, 16 U.S.C. § 470hh, which restricts the BLM’s ability

to make available to the public information concerning the nature and location of archaeological resources.

10. TY Cattle Company LLC, which is owned and operated by Zebediah Dalton, holds a livestock grazing permit for the Lake Canyon Allotment. Approximately 47% of the Lake Canyon Allotment's approximately 395,882 acres are in BENM. The Lake Canyon Allotment is the largest livestock grazing allotment in BENM. The location of the Lake Canyon Allotment is reflected in the below map, which also reflects the location of several resources protected by Proclamation 10,285:



11. Several resources that are protected by Proclamation 10,285 are located within the Lake Canyon Allotment, including portions of the Red House Cliffs, Mancos Mesa, Moqui

Canyon, and Mike’s Canyon. Additionally, Salvation Knoll, “a point from which lost Latter-Day Saint pioneers were able to obtain their bearings on Christmas Day in 1879,” Proclamation 10285—Bears Ears National Monument, 86 Fed. Reg. 57,321, 57,328 (Oct. 15, 2021), and portions of the Hole in the Rock Trail are located within the Lake Canyon Allotment. Numerous additional objects of historic or scientific interest protected by the Proclamation are included within the Lake Canyon Allotment, but the Archaeological Resources Protection Act, 16 U.S.C. § 470hh, restricts the BLM’s ability to make available to the public information concerning the nature and location of those resources.

12. Since the issuance of Proclamation 10,285, the BLM has continued to work on processing applications for range improvement projects within BENM, as the proclamation does not prohibit the BLM from authorizing range improvements projects within the boundaries of the Monument. The BLM is currently analyzing six different range improvements projects within the Monument’s boundaries in accordance with the National Environmental Policy Act (NEPA) and other applicable laws. In total, the six range improvement projects would include the construction of approximately 16 water wells, 15 ponds, and several new fences within BENM. To date, the BLM has released preliminary environmental assessments associated with three of the six proposals for public comment. *See* BLM NEPA Register, Red House Pasture Water Wells, available at <https://eplanning.blm.gov/eplanning-ui/project/1505645/570> (last visited March 2, 2023); BLM NEPA Register, Slickhorn Allotment Water Wells, available at <https://eplanning.blm.gov/eplanning-ui/project/2003814/570> (last visited March 2, 2023); and BLM NEPA Register, Indian Creek Allotment Range Improvements, available at <https://eplanning.blm.gov/eplanning-ui/project/112998/570> (last visited March 2, 2023).

13. The issuance of Proclamation 10,285 did not change the process by which Zebediah Dalton or any other livestock grazing permittees apply to the BLM for authorization to construct range improvements on public lands. While it is true that, because of Proclamation 10,285, the BLM must determine that a range improvement is consistent with the protection of monument objects, that does not mean that the BLM is barred from authorizing range improvements. As explained above, the BLM is actively evaluating the environmental impacts of several range improvement projects within BENM in accordance with NEPA.

14. The BLM has not denied any applications related to range improvements submitted by Zebediah Dalton or T Y Ranch since the issuance of Proclamation 10,285 in October 2021.

15. The BLM is currently processing two applications submitted by Zebediah Dalton on behalf of T Y Ranch. The first application relates to the construction of six water wells and was submitted to the BLM in 2018. Since receiving the application, the BLM has reviewed the project, coordinated with interested publics, and released a preliminary environmental assessment for public comment in May 2022. *See* BLM National NEPA Register, Red House Pasture Water Wells, available at <https://eplanning.blm.gov/eplanning-ui/project/1505645/570> (last visited March 2, 2023). The BLM is currently working on responses to the public comments received by the agency.

16. The second application, submitted by Zebediah Dalton on March 13, 2019, on behalf of the T Y Ranch, seeks a right-of-way under Title V of the Federal Land Policy and Management Act to move drilling equipment across BLM-managed public land to access a parcel owned by the State of Utah School and Institutional Trust Lands Administration (SITLA). The requested right of way would cross a Wilderness Study Area that the BLM is required to

manage “in a manner so as not to impair the suitability of such areas for preservation as wilderness.” 43 U.S.C. § 1782(c). The BLM deemed that application complete on June 7, 2019. Although the BLM initiated the NEPA process, the agency has made little progress processing the application since early 2020 due to staffing constraints, not Proclamation 10,285. In general, applications from third parties that present unique land management complexities, such as engaging in cross-country motorized vehicle use in an area where the BLM is statutorily obligated to not impair the suitability of such areas for preservation as wilderness, typically take longer to process than applications seeking more common types of authorization. It is not uncommon for such applications to take several years to process.

17. The BLM sent an email to Zebediah Dalton on January 5, 2023, asking whether he has and would share pump test information for certain wells located outside the exterior boundaries of BENM. The BLM requested this information because it was working on an environmental assessment for two wells on a different livestock grazing allotment, and the information would provide the BLM with insight into the status of the local aquifer. Zebediah Dalton never responded to the BLM’s January 5, 2023, email.

18. In April 2022, Zebediah Dalton contacted the BLM about receiving authorization to cross BLM-managed public lands to access two SITLA parcels in Red Canyon. The BLM-managed public lands that Mr. Dalton was seeking to cross are not located in BENM. In December 2022, the BLM informed Mr. Dalton that he would need to obtain a right-of-way to cross the BLM-managed public lands and access the two SITLA parcels in Red Canyon because a portion of his proposed route would require cross-country motorized vehicle use that had not been previously authorized through a right-of-way. By comparison, in March 2022—months after issuance of Proclamation 10,285—the BLM provided Mr. Dalton with administrative

access to cross BLM-managed public lands to access different SITLA parcels because in that instance, the only cross-country portion of Mr. Dalton's proposed route was covered by a previously issued (but then expired) right-of-way. In sum, the requirement for Mr. Dalton to obtain a right-of-way to cross BLM-managed public lands to access two SITLA parcels in Red Canyon stemmed from whether Mr. Dalton's proposed cross-country routes were covered by a previously issued right-of-way and was unrelated to the issuance of Proclamation 10,285.

19. Proclamation 10,285 does not prohibit the BLM from authorizing vegetation treatment or hazardous fuels reduction projects within the boundaries of BENM. Indeed, the agency is currently analyzing a fuels reduction retreatment and maintenance project on approximately 1844 acres located within the Monument. *See* BLM National NEPA Register, Shay Mesa Retreatment/Maintenance, available at <https://eplanning.blm.gov/eplanning-ui/project/2016895/510> (last visited March 2, 2023). The proposed project, which would involve removing pinyon and juniper that has been regenerating near Shay Mesa, would promote grass, forb, and shrub potential while reducing fire severity within the area. The BLM released the preliminary environmental assessment associated with the project for a 30-day public comment period on August 3, 2022.

20. The BLM authorizes commercial, competitive, and group recreation uses of the public lands and related waters through the issuance of special recreation permits (SRPs). The BLM issues SRPs in accordance with 43 C.F.R. subpart 2932. The BLM may issue an SRP for any duration, up to a maximum of 10 years. 43 C.F.R. § 2932.42. SRPs that are issued for more than one year are subject to annual validation by the BLM.

21. In 2022, the BLM issued six annual validation letters to permittees with pre-existing, multi-year SRPs that authorize off-highway vehicle (OHV) rides in BENM. In 2022,

the BLM also renewed a 10-year SRP that allows for OHV rides in the Monument. All seven permittees are authorized to use multiple routes within or partially within BENM as part of their authorized OHV rides. Three of the permittees are authorized to conduct one-time, annual events. The other four permittees are authorized to conduct small-scale, regular OHV tours throughout the year on routes within or partially within BENM that are designated as open in the current travel management plan.

22. To my knowledge, no BLM employee or representative has sought to prevent search-and-rescue personnel from entering closed roads, going off trails, or landing medical helicopters or demanded that alternative measures be used to protect items identified by Proclamation 10,285 as monument objects. BLM personnel regularly assist with search and rescue operations in BENM. In instances where BLM personnel have arrived on scene and assessed the situation before the San Juan County search-and-rescue team arrived, they may have provided information that informed the search-and-rescue team's decision not to proceed with a helicopter extraction because of potential expense, risk to personal safety, or other factors influenced by local conditions. However, the BLM has never required that a helicopter extraction not occur, or that alternative measures must be utilized, to ensure consistency with Proclamation 10,285.

23. To date, the BLM has not received any applications from the State of Utah to construct or access water development well projects on lands managed by SITLA near Mancos Mesa or Grand Gulch.

24. Most visitation to BENM occurs from March through October, with the Spring and Fall experiencing the highest amount of visitation.

Executed this 2nd day of March 2023, in Monticello, Utah.

Michael J. Lundell

Acting Bears Ears National Monument Manager